

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

Marco Andrae Clark,)	Civil Action No. 0:22-cv--01988-RMG
)	
Petitioner,)	
)	
v.)	ORDER
)	
South Carolina,)	
)	
)	
Respondent.)	
_____)	

Before the Court is the Report and Recommendation (“R & R”) of the Magistrate Judge (Dkt. No. 16) recommending that the Court dismiss the case with prejudice and without requiring the Respondent to file a return. For the reasons set forth below, the Court adopts the R & R as the Order of the Court and dismisses the case with prejudice.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight and the responsibility to make a final determination remains with the Court. *See, e.g., Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Where the plaintiff objects to the R & R, the Court “makes a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* Where the petitioner has not objected, the Court reviews the R & R to “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s note. In the absence of objections, the Court need not give any explanation for adopting the Magistrate Judge’s analysis and recommendation. *See, e.g., Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983) (“In the absence of

objection . . . we do not believe that it requires any explanation.”). The Petitioner did not file objections and the R & R is reviewed for clear error.

In this case, Petitioner Marco Andrae Clark, is a state prisoner proceeding *pro se*. Petitioner is an inmate at the Kirkland Correctional Institution of the South Carolina Department of Corrections and filed a Petition that seeks to reduce his sentence because of mistakes made by counsel during his plea proceeding pursuant to 18 U.S.C. § 3582. (Dkt. No. 1). The Petition was docketed as a petition for a writ of habeas corpus. (*Id.*). The Court issued an order explaining to Petitioner that a motion to reduce a sentence pursuant to 18 U.S.C. § 3582 only applies to federal prisoners. (Dkt. No. 5). The Court gave Petitioner the opportunity to file a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and sent Petitioner a standard § 2254 form for *pro se* litigants. (*Id.*). Petitioner returned the form, which was docketed as an Amended Petition, but it was mostly incomplete and did not indicate he sought § 2254 relief. (Dkt. No. 10). The Magistrate Judge correctly determined that Petitioner has not presented a cognizable federal claim to raise in this case pursuant to § 2254, nor can he seek relief pursuant to 18 U.S.C. § 3582. (Dkt. No. 16). The Court agrees with the Magistrate Judge.

For the foregoing reasons, the Court **ADOPTS** the R & R of the Magistrate Judge (Dkt. No. 16) as the Order of the Court. The Petition is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

s/ Richard M. Gergel
Richard M. Gergel
United States District Judge

October 26, 2022
Charleston, South Carolina